THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.18694 of 2006

Dated: 15th September, 2006

Between :-

Smt.Sunandamma .. Petitioner

And

The Executive Officer/Secretary, Gram Panchayat Kodangal, Kodangal village & Mandal, Mahabubnagar District and 4 others .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.18694 of 2006

ORDER:-

1. This Court ordered *notice before admission* on 8-9-2006. Sri Upender Reddy had taken notice on behalf of R.1. Learned A.G.P. for Panchayat Raj had taken notice on behalf of R.2 and both the Counsel requested time to file counter affidavits. The Counsel for petitioner was permitted to take out notices to R.3, R.4 and R.5 and the respondents 3, 4 and 5 are served. Sri K.Govind had entered appearance and filed counter affidavit.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of R.1 in granting permission No.89 of 2005 dated 31-12-2005 to the respondent Nos.3 to 5 for construction of the multi-storied building without leaving any setback in contrary to Rule 20(2) of the Andhra Pradesh Gram Panchayat Land Development (Lay Out and Building) Rules, 2002 and thus has the effect of violation of fundamental rights guaranteed to the petitioner under Articles 14, 19 and 21 of the Constitution of India and consequently to set aside the permission No.89 of 2005 dt.31-12-2005 issued by the 1st respondent and pass such other suitable orders.

3. Sri Upender Reddy representing R.1 on instructions had stated before this Court that there are no deviations at all and even otherwise the appeal would lie to Gram Panchayat and from the said order, the further Second Appeal alone would lie to the District Panchayat Officer and hence, the appeal said to have been filed before the District Panchayat Officer – the 2nd respondent itself is incompetent. The learned A.G.P. for Panchayat Raj also had taken the same stand and had drawn the attention of this Court to Section 128 of the Andhra Pradesh Panchayat Raj Act 1994 (hereinafter, in short, referred to as 'Act' for the purpose of convenience).

4. Sri Venkatesh Gupta, the learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and also would submit that though the appeal already was filed before the 2nd respondent – District Panchayat Officer, now the petitioner already had presented an appeal before the concerned Gram Panchayat in accordance with law. The learned Counsel also would strongly rely upon the Andhra Pradesh Gram Panchayat Land Development (Lay Out and Building) Rules, 2002 and would maintain that inasmuch as contrary to the Rules without leaving the necessary

setbacks, the building permission was granted and the same is liable to be set aside. The learned Counsel also had drawn the attention of this Court to certain other factual controversies.

5. Sri Govind, the learned Counsel representing respondents 3 to 5 would submit that the stage of construction is at an advanced stage. Even otherwise, the learned Counsel would submit that not only the appeal filed by the petitioner before the 2nd respondent straight away is incompetent but further the Counsel would submit that the petitioner in fact filed O.S.No.45/2006 on the file of Junior Civil Judge, Kodangal, Mahaboobnagar District for permanent injunction, virtually praying for the same relief and further prayed for temporary injunction in I.A.No.115/2006 and the said application was dismissed on 1-9-2006. Even otherwise, the learned Counsel would submit inasmuch as these respondents are proceeding with the construction in accordance with the sanctioned plan and also in view of the fact that the petitioner already had invoked the jurisdiction of a competent Civil Court virtually for similar relief and also in view of the fact that the petitioner is having an effective alternative remedy by way of appeal, the Writ Petition is liable to be dismissed. The learned Counsel also would submit that in view of the

urgency involved in the matter inasmuch as the interim order granted by this Court is coming in the way of further construction, the Writ Petition itself may be finally disposed of.

6. Heard the Counsel.

7. It is stated that the petitioner is the owner and possessor of the house bearing No.1-88 situated at Inderganja, Kodangal village & Mandal, Mahabubnagar District and respondents 3 to 5 are the owners and possessors of the house bearing No.1-89, 1-90 and 1-91 on the back side of his house. It is also stated that respondents 3 to 5 submitted an application to Gram Panchayat, Kodangal in the month of August, 2005 for grant of permission for construction of a new pucca house in the existing old house by demolishing the same. It is also stated that as per Rule 20(2) of the Andhra Pradesh Gram Panchayat Land Development (Lay Out and Building) Rules, 2002, a minimum of 2 metres open place shall be left as setback. On calling for objections it is stated that the petitioner submitted objections requesting to direct respondents 3 to 5 to leave 3 feet open space as setback towards the house of the petitioner. But despite the objections, the 1st respondent granted permission vide permission No.89/2005 dt.31-12-2005 in pursuance of the

resolution No.3(2) dt.12-9-2005 said to have been passed by the Gram Panchayat, Kodangal, contrary to the Rule 20(2) of the Andhra Pradesh Gram Panchayat Land Development (Lay Out and Building) Rules, 2002 for construction of their building comprising Ground + 2 floors without leaving any setback. In the affidavit filed in support of the Writ Petition in para 3, the filing of O.S.No.45/2006 on the file of Junior Civil Judge, Kodangal and moving of an application I.A.No.115/06 for grant of temporary injunction also had been referred to. It is further stated that the petitioner filed appeal on 14-8-2006 before the 2nd respondent challenging the permission – resolution praying for setting aside or revoking the said permission issued by the 1st respondent and the petitioner also filed an application for interim suspension. It is also stated that the aforesaid I.A.No.115/2006 was dismissed by order dt.1-9-2006 holding that respondents 3 to 5 are constructing on the strength of the permission granted by the Gram Panchayat. In such circumstances, it is stated that the petitioner is approaching this Court under Article 226 of the Constitution of India praying for appropriate reliefs.

8. In the counter affidavit filed by respondents 3 to 5 it was stated that the petitioner's husband Monaiah agreed

that the wall in between the two houses as a common wall. Similarly, their vendor Ram Mohan Rao is also entitled to construct a house by erecting pillars in the common wall and he had also accepted that neither himself nor his heirs have any objection to erect pillars in the common wall. Thus, the petitioner is estopped from pleading that the respondents had violated the building bye-laws. In fact, the said agreement dated 27-3-98 was acted upon. It is also stated that the respondents applied for permission to reconstruct the house by demolishing the old house. The petitioner and her son filed objections before the Gram Panchayat, Kodangal. The Sarpanch and Members of Gram Panchayat inspected the house and found that there is no 'Seri Sendhi' between the houses and there is only a common/joint wall. The Sarpanch and other members also enquired with the locality people and found that the petitioner raised untenable objection apart from agreement entered into between their vendor and petitioner's husband and having been satisfied, the Gram Panchayat passed resolution according permission for construction of house as per the plan submitted by the respondents and the said resolution was passed on 12-9-2005 and accordingly, the Gram Panchayat issued permission vide proceedings No.89/2005, dt.31-12-2005.

The petitioner filing the suit and moving an application for temporary injunction and disposal of the application also had been referred to in para 5 of the counter affidavit. It was also stated that the petitioner filed an appeal before the District Panchayat Officer, Mahabubnagar, on 14-8-2006 i.e., 8 months after permission for construction of the house and immediately after sanction of permission, these respondents started construction by investing huge amount and completed most of the work and they now to lay roof on the first floor as the centering work was completed and at this juncture, it is stated that the petitioner approached this Court by filing the present Writ Petition. It is also stated in para 7 that the Writ Petition is not maintainable for following reasons:-

(i) *The petitioner's husband consented for erecting pillars on the common wall in the year 1998 itself. The said agreement is binding on the petitioner and estopped from pleading that is not set back.*

(ii) *The Gram Panchayat after taking into consideration of the objection filed by the petitioner and inspecting the site granted permission on 31-12-2005. Immediately thereafter respondents 1 to 3 have commenced the construction work. The petitioner kept quiet for eight months. Respondents 3 to 5 have to lay roof on the first floor as the sentry work was*

completed. R.3 to R.5 spent considerable amount on the construction and the building material is lying at the site.

(iii) The petitioner filed O.S.No.45/06 on the file of Junior Civil Judge, Kodangal, Mahabubnagar Dist., on 2-8-2006 and the same is pending. The injunction petition i.e., I.A.No.115/2006 is dismissed on 1-9-2006. R.3 to R.5 understand that the petitioner has not filed an appeal against the said order.

(iv) According to the petitioner she preferred an appeal before the District Panchayat Officer, Mahabubnagar on 14-8-2006 i.e., after eight months of sanction of building permission and the same is pending as it is barred by limitation, she is not entitled for any relief.

(v) R.3 to R.5 commenced the work as per sanctioned plan of Gram Panchayat and completed the most of the work by raising the pillars and there is no violation of building bye-laws as alleged by the petitioner. Having failed in all attempts, the petitioner cannot invoke the jurisdiction of this Hon'ble Court with unclean hands.

(vi) The condition imposed in the permission that R.3 to R.5 have to complete the construction within one year. As already eight months have been elapsed, the construction has to be completed before 1st December, 2006. In the event work is stopped, R.3 to R.5 may not complete the

construction in stipulated time.

9. Section 128 of the A.P.Panchayat Raj Act 1994 dealing with ***Appeal from the order of executive authority*** reads as hereunder:-

> *(1) An appeal shall lie to the Gram Panchayat from, -*
>
> *(a) any order of the executive authority granting, refusing, suspending or revoking a licence or permission;*
>
> *(b) any other order of the executive authority that may be made appealable by rules made under Section 268.*
>
> *(2) A second appeal shall lie from the decision of the Gram Panchayat passed in an appeal under sub-section (1) to such authority as may be prescribed whose decision thereon shall be final.*

Section 2 of the aforesaid Act deals with ***Definitions*** and Section 2(17) of the Act defining Gram Panchayat reads that *in this Act, unless the context otherwise requires "Gram Panchayat" means the body constituted for the local administration of a village under this Act*. It is stated by both the standing Counsel representing R.1 and the learned A.G.P. representing the 2nd respondent that the appeal against the order in question would lie to the Gram Panchayat and not to the 2nd respondent – The District

Panchayat Officer. It is also stated that in the light of the sub-Section (2) Section 128 *a second appeal shall lie from the decision of the Gram Panchayat passed in an appeal under sub-section (1) to such authority as may be prescribed whose decision thereon shall be final.* In exercise of the powers conferred by sub-section (2) of Section 128 read with Section 268 of the Andhra Pradesh Panchayat Raj Act 1994 and in supersession of the rules issued in G.O.Ms.No.770, Panchayat Raj, dated the 21st July, 1964, the Governor of Andhra Pradesh made the Rules relating authority to whom a second appeal shall lie from the decision of the Gram Panchayat under G.O.Ms.No.139, Panchayat Raj & Rural Development (Rules), dt.18-4-2000 and Rule 3 dealing with ***Second Appeal*** specifies that *a Second Appeal shall lie to the District Panchayat Officer over the decision of the Gram Panchayat passed in an appeal under sub-Section (1) of Section 128 of the Act.* Certain submissions in relation to Section 129 of the A.P.Panchayat Raj Act, 1994 also had been advanced. Be that as it may, inasmuch as now it is stated that an appeal to the Gram Panchayat as such had been preferred in accordance with Section 128(1) of the A.P.Panchayat Raj Act 1994, the petitioner is at liberty to pursue the said remedy in accordance with law. This

Court is not inclined to express any further opinion relating to other controversies between the parties. However, taking into consideration that a competent Civil Court already was not inclined to grant temporary injunction and dismissed the application I.A.No.115/2006 in O.S.No.45/2006 on the file of Junior Civil Judge, Kodangal, this Court is of the considered opinion that the interim order of *status quo* made by this Court cannot be sustained in the light of the order made by the competent Civil Court and liberty is given to the petitioner to pursue the other remedies available to the petitioner in law. Except making this observation, nothing else can be done. Accordingly, with the above observation, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

15th September, 2006

L.R. copy to be marked

Note: C.C. in one week (B/o.SMR)